
1996 Wis Eth Bd 13
LOCAL CODE - DISQUALIFICATION

A member of a local unit of government's legislative body should not simultaneously serve, in a private capacity, as an officer or director of a tourism organization and participate in discussions or votes to establish a room tax to support the organization financially.

A member of a local unit of government's legislative body who is a director of a tourism organization generally should not participate in a decision concerning room tax receipts if the decision could substantially affect the level of receipts earmarked for the organization. If decisions on these issues are presented to the legislative body in the form of an ordinance or ordinance amendment, then a member of that body who also serves on the board of the tourism organization should not act in a way that aids the organization of which he or she is a director.

OEB 96-13 (July 31, 1996)

Facts

[1] This opinion is based upon these understandings:

- a. You are the attorney for a local unit of government.
- b. Three of the six members of the local government's legislative body serve on the board of directors of a tourism organization("organization A").
- c. Organization A is a private, not for profit organization whose membership is primarily made up of business people in the tourism industry in the-area.
- d. The local government currently imposes a room tax of which Organization A currently receives a significant majority percentage.
- e. A new tourism organization ("Organization B") has asked the local government to earmark a portion of the room tax receipts for its use.

- f. The local unit of government's legislative body may also in the future consider a resolution that would direct all room tax receipts to Organization A for promotional activities.

Questions

[2] The Ethics Board understands your questions to be:

1. May a member of the local unit of government's legislative body who is a director of Organization A participate in discussions or votes to establish a room tax when Organization A will receive a substantial portion of the room tax receipts for promotional efforts?
2. May a member of the local unit of government's legislative body who is a director of Organization A participate in discussions or votes to earmark a portion of the city's room tax receipts for Organization B?

Discussion

[3] Section 19.59(1), *Wisconsin Statutes*, provides that no local public official may use public position or office to obtain financial gain, anything of substantial value, or a substantial benefit for an organization with which the official is associated or take any official action substantially affecting a matter in which an organization with which the official is associated has a substantial financial interest.¹

¹ Section 19.59(1), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

* * *

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more

Room tax

[4] A member of a local unit of government's legislative body is a local public official subject to §19.59.² Participating as a member of such body in discussions, deliberations, or votes on an issue before the board is a use of office. *See, e.g.*, 1992 Wis Eth Bd 22. Organization A is an "organization."³ A member of a local unit of government's legislative body is associated with Organization A if the member, in his or her private capacity, is an officer or director of Organization A.⁴ Room tax revenues have substantial value for Organization A; it is our understanding that, among other purposes, revenues will be used for the direct benefit of the organization in defraying the organization's costs and in promoting the business of the organization's members. Therefore, we advise that a member of a local unit of government's legislative body should not simultaneously serve, in a private capacity, as an officer or director of Organization A and participate in discussions or votes to establish a room tax commission to support Organization A financially.

Organization B

[5] Your second question is whether a member of a local unit of government's legislative body who is a director of Organization A may participate in discussions or votes on whether to give a portion of room tax receipts to Organization B. We advise that a member of a local unit of government's legislative body not simultaneously serve, in a private capacity, as an officer or director of Organization A and participate in a decision concerning room tax receipts if the decision could substantially affect the level of receipts earmarked for that organization. *Cf. Heffernen v. City of Green Bay*, 64 N.W.2d 216, 220 (1954) (there is a long-established public policy in this state "that a public officer in discharge of his duties as such

members of the official's immediate family either separately or together, or an organization with which the official is associated.

² Under §19.42(7u), (7w), and (7x), *Wisconsin Statutes*, a local public official includes an individual that holds an elective office of a political subdivision of the state.

³ Section 19.42(11), *Wisconsin Statutes*, provides:

19.42(11) "Organization" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

⁴ Section 19.42(2), *Wisconsin Statutes*, provides:

19.42(2) "Associated", when used with reference to an organization includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

shall be absolutely free from any influence other than that which grows out of the obligations that he owes to the public at large.”); *Edward E. Gillen Co. v. City of Milwaukee*, 183 N.W. 679 (1921).

Ordinance amendment

[6] You have also raised the issue whether section 19.59(1)(d), *Wisconsin Statutes*, would permit members of a local unit of government’s legislative body who are directors of Organization A to participate in room tax deliberations if the local government’s decisions on these issues are presented to the legislative body in the form of an ordinance or ordinance amendment. Section 19.59(1)(d) provides that the restrictions of §19.59(1)(c), *Wisconsin Statutes*, that prohibit an official from taking action in a matter in which an associated organization has a substantial financial interest or from using public office to produce or assist in the production of a substantial benefit for an associated organization, does not “prohibit a local public official from taking action with respect to any proposal to modify a county or municipal ordinance.” But this exception, by its specific terms, does not affect the narrower prohibition in §19.59(1)(a) that a local public official may not use his or her office or position to obtain anything of substantial value for the private benefit of an organization with which the official is associated. *See, e.g.*, 1995 Wis Eth Bd 1. Thus, a member of a local unit of government’s legislative body who serves, in a private capacity, on the board of Organization A should not act in a way that aids the organization of which he or she is a director. This means, for example, that such member should not vote against earmarking revenues for Organization B if that action helps preserve Organization A’s continuing receipt of room tax revenues.⁵

Advice

[7] The Ethics Board advises that a member of a local unit of government’s legislative body should not simultaneously serve, in a private capacity, as an officer or director of a tourism organization and participate in discussions or votes to establish a room tax to support the organization financially.

[8] Moreover, a member of a local unit of government’s legislative body who is a director of a tourism organization generally should not participate in a decision concerning room tax receipts if the decision could substantially affect the level of receipts earmarked for the organization. If decisions on these issues are presented to the legislative body in the form of an ordinance or ordinance amendment, then a member of that body who also serves on the

⁵ We note that you have indicated that the Ethics Code’s provisions may prevent the local unit of government’s legislative body from acting on matters because of the lack of a voting quorum.

board of the tourism organization should not act in a way that aids the organization of which he or she is a director.

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